

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), dated and effective September 7th, 2017, is between the **WEST VIRGINIA DEVELOPMENT OFFICE**, a Division of the West Virginia Department of Commerce, located at State Capitol Complex, Building 3, Suite 600, Charleston, WV 25305 ("WVDO"), and **ROXUL USA Inc.** with headquarters located at 4594 Cayce Rd., Byhalia, MS 38611 ("Roxul"). WVDO and Roxul are each a "Party" and are collectively the "Parties."

RECITALS

WHEREAS, Roxul is considering numerous locations in the Eastern United States on which to develop, construct, equip, and operate a new manufacturing facility to support its North American operations (the "Facility");

WHEREAS, Roxul has identified the Jefferson Orchards site in Ranson, West Virginia, as its preferred site to locate and develop the Facility (the "West Virginia Site"). A copy of a map depicting the West Virginia Site is attached to this MOU as **Exhibit 1**;

WHEREAS, Roxul has represented to the WVDO that a final investment decision to construct and operate the Facility at the West Virginia Site will require a commitment to expend approximately \$150,000,000 (USD), and employ approximately 140 full-time equivalent employees ("Final Investment Decision");

WHEREAS, the state of West Virginia has identified certain economic development assistance it will make available to Roxul if Roxul makes and fully implements the Final Investment Decision, all subject to the terms and conditions described in this MOU; and

WHEREAS, the Parties desire to execute this MOU to clarify their respective representations, requirements, and commitments to facilitate the Final Investment Decision by Roxul.

NOW THEREFORE, in consideration of the mutual promises contained herein, the investment by Roxul, and the economic assistance provided by the WVDO, the Parties hereby agree as follows:

1. Commitment of the Parties. The WVDO will provide, or facilitate the provision of, the economic development assistance described in this MOU to Roxul, and Roxul will satisfy the Project Thresholds described in this MOU.

2. Project Thresholds. On or before the Full Operation Date, as hereinafter defined, Roxul will:

- a. Employ approximately 140, and in no event less than 120, full-time equivalent employees at the Facility who earn an average annual salary or wage of \$46,000 excluding paid benefits not subject to West Virginia income taxes (the "Employment Threshold");

Document that Roxul has caused the expenditure of approximately \$150,000,000 (USD) or more to expand, construct, equip, and operate the Facility.

3. Definitions.

- a. "Full-time equivalent employee" means a direct employee who receives paid benefits and works at least 140 hours per month; or, for part-time work, an employee who receives paid benefits and works at least 20 hours per week for at least six consecutive or non-consecutive months per year. The term "full-time equivalent employee" does not mean independent contractors who work for Roxul at the West Virginia Site.
- b. "Independent contractor" means any natural person or business entity that provides goods or services to another person or entity in accordance with terms specified in a contract or other agreement and who is subject to the control of any other party to such contracts or agreements only as to results. An independent contractor is independently licensed to do business in West Virginia, has an independent proprietary interest in its business operations, has an independent opportunity for profit or loss because of the provision of goods or services pursuant to such contracts or agreement, independently invests in the facilities by which its goods or services are provided, directs and controls the details of work and operations performed, regarding hours of work, and the order, sequence and manner in which work is completed for the provision of goods and services in fulfillment of such contracts or agreement, or supplies the tools, equipment and materials used to fulfill the requirements of such contracts or agreements. Independent contractor does not include any natural person or entity that has any employees in common with any other party to such contracts or agreements. For purposes of this provision, the status of any person or entity as an "employee" shall be determined in accordance with United States Internal Revenue Code section 3121, such that the person or entity does not have common ownership, common control, common operation or common management with any other party to such contracts or agreements. For purposes of this provision, "common ownership, common control, common operation or common management" means that two or more business entities are owned, controlled, operated or managed by the same person or group of persons.

Ownership includes, but is not limited to ownership as determined, in accordance with the attribution and stock ownership rules of Internal Revenue Code section 267 or Internal Revenue Code section 318 or both, as applicable, and the rules and regulations pertinent thereto. Applicability of any Internal Revenue Service requirement or rule regarding the issuance or receipt of an Internal Revenue Service Form 1099 with relation to any payment or transaction consummated under any such contract or agreement is not determinative of independent contractor status for purposes of this provision.

4. Construction Date and Full Operation Date. Roxul anticipates that it will adhere to the following schedule for commencement of construction activities and operations at the West Virginia Site:

- a. Construction of the Facility will begin within 90 days of receipt of acceptable Prevention of Significant Deterioration ("PSD") air permit from the West Virginia Department of Environmental Protection (WVDEP), or the following May 1st, whichever is later.
- b. Full Operation of the Facility will occur five years from the issuance of the certificate of occupancy or June 1st, 2024, whichever is sooner (the "Full Operation Date").

5. Performance-Based Forgivable Loan. The State of West Virginia will issue a forgivable loan to Roxul in the principal amount of \$2,200,000.00 (USD). The forgiveness of the loan will be subject to Roxul meeting or exceeding the Employment Threshold set forth in paragraph 2 a of this MOU (the "Forgivable Loan"). The Forgivable Loan will be subject the following general terms:

- a. The WVDO will facilitate the Forgivable Loan in coordination with the West Virginia Economic Development Authority, the local economic development authority, and/or the West Virginia Infrastructure and Jobs Development Council (the "Lending Authority").
- b. WVDO and Roxul will mutually agree on a draw schedule. No draw will be available until receipt of an acceptable PSD air permit. The full-amount of the loan may be drawn upon receipt of the PSD air permit and, the earlier of, construction commencement or 90 days of receipt of PSD air permit.

- c. Roxul may cause the proceeds of the Forgivable Loan to be used to purchase or lease land, building, or equipment, or any combination thereof, to complete the Facility (the "Facility Assets").
- d. Roxul will grant the Lending Authority at least a second priority security interest in and lien upon the Facility Assets or such portion thereof necessary as collateral to secure the Forgivable Loan.
- e. Roxul will not be obligated to make any payment on the Forgivable Loan prior to the Full Operation Date.
- f. If Roxul meets or exceeds the Employment Threshold at or before the Full Operation Date, the Lending Authority will forgive the Forgivable Loan in its entirety at that time.
- g. If Roxul fails to meet or exceed the Employment Threshold at or before the Full Operational Date, Roxul will repay the Forgivable Loan to the Lending Authority on a pro rata basis (the "Prorated Repayment"). The Prorated Repayment is equal to the proportion that new Full Time Equivalent jobs at the Facility failing to meet the Employment Threshold bears to the Forgivable Loan. For example, if Roxul directly employs only 100 new employees at the Facility on the Full Operation Date, the calculation would be:

$$(1 - (100/120)) \times 2,000,000 = \$333,333.33 \text{ (Prorated Repayment)}$$

6. **Sewer Service.** The WVDO, or a related state agency, will provide sufficient funding to the City of Ranson, West Virginia to provide adequate sewer service to the property line of the West Virginia Site, at no cost to Roxul. A copy of the WVDO's letter to the City of Ranson demonstrating this commitment and the MOU between the State of West Virginia and City of Ranson are attached in this MOU as **Exhibit 2**. Roxul will provide notice to the City of Ranson and the State of West Virginia as to the progress of the PSD air permit by September 30th, 2017.

7. **Water Service.** The WVDO, a related state agency, and/or the Jefferson County Economic Development Authority will provide sufficient funding to Jefferson Utilities Corporation ("Jefferson Utilities") to provide adequate water service to the property line of the West Virginia Site, at no cost to Roxul. A copy of the WVDO's letter to the Jefferson Utilities demonstrating this commitment and the MOU between the State of West Virginia and Jefferson Utilities are attached in this MOU as **Exhibit 3**. Roxul will provide notice to the Jefferson Utilities and the State of West Virginia as to the progress of the PSD air permit by September 30th, 2017.

8. Extension of Additional Utilities. The WVDO is aware of commitments on behalf of certain utility providers, including First Energy (electric transmission service), Mountaineer Gas (natural gas service), and Frontier Communications (telecommunications service) to extend additional utilities reasonably necessary to service the West Virginia Site. The WVDO will work with Roxul and these providers, as necessary and if appropriate, to ensure that these additional utilities are extended to the West Virginia Site. A copy of letters from these utility providers demonstrating their commitment to extend these utilities to the West Virginia Site is attached to this MOU as **Exhibit 4**.

9. PILOT Agreement. The WVDO will support the Jefferson County Economic Development Authority, the West Virginia Economic Development Authority, and/or any other community entity, including the Jefferson County Commission, Jefferson County School Board, or the Jefferson County Assessor, as necessary and if appropriate, to facilitate the Payment in Lieu of Tax Agreement ("PILOT") acceptable to Roxul and Jefferson County, West Virginia. A copy of the PILOT Agreement attached to this MOU as **Exhibit 5**.

10. Ingress and Egress. The West Virginia Department of Transportation, Division of Highways ("DOH"), will administer the design, construction, and necessary funding to address reasonable access modifications along the State Highway System to provide ingress and egress to the West Virginia Site. A copy of the DOH's letter to Secretary Thrasher specifying this commitment is attached to this MOU as **Exhibit 6**.

11. Workforce Training. The Governor's Guaranteed Work Force Program ("GGWP") offers training grants up to \$2,000 per employee for eligible companies that create a minimum of 10 new jobs within a 12-month period. If Roxul makes the Final Investment Decision, the WVDO will provide Roxul with a \$2,000 workforce training grant under the GGWP for each new employee it hires and employs at the West Virginia Site during the first three consecutive years the Facility is operational at the West Virginia Site. These flexible training grants may be used by Roxul to offset the cost of employee recruitment, pre-employment assessment, workplace development, structured on-the-job training and development, expenses for traveling to/from training, trainer salaries, cost of trainers, training materials and/or workplace education. Roxul would qualify for \$240,000 in any one year based on 120 jobs and could qualify for more than \$240,000 based on any additional employment over 120 employees under the GGWP. For purposes of this paragraph, the term "year" means the state of West Virginia's fiscal year which begins on July 1 and ends on June 30.

12. Tax Benefits. Based on the mutual covenants, promises, and agreements described in this MOU, Roxul will qualify for various tax credits, entitlements, exemptions, and assistance

under West Virginia law (including, statutory sales tax exemptions for the purchase of tangible personal property and services directly used in manufacturing, which shall extend to purchases of building materials and process equipment by Roxul's suppliers and contractors and other parties purchasing on behalf of Roxul in furtherance of the construction of the Facility at the West Virginia Site). The direct use in manufacturing exemption shall also be available to Roxul for purchases of tangible personal property and services directly used in manufacturing, including, but not limited to, purchases of raw materials and process equipment directly used in manufacturing. The WVDO will work with Roxul to facilitate the Company's understanding and access to these benefits and incentives. A copy of the West Virginia Tax Departments forms TSD 110 and TSD 300 explaining tax credits and exemptions is attached to this MOU as **Exhibit 7**.

13. 5 for 10. Provided ROXUL can meet all statutory conditions of WV Code 11-6F-1 *et. seq.*, the WVDO shall cooperatively work with ROXUL to help ROXUL access all the benefits associated with this statutory incentive.

14. Contingencies. The Final Investment Decision is made expressly contingent upon the occurrence of the following conditions precedent ("Project Contingencies"), the failure of any of which will entitle Roxul to unilaterally terminate this MOU without any penalty or obligation:

- a. Site Acquisition: Roxul shall close on the West Virginia Site no later than January 15, 2018 ("Site Closing") and upon terms and conditions acceptable to Roxul, including, but not limited to, Roxul being able to obtain acceptable representations, warranties, covenants, indemnities, and title for the West Virginia Site and contingent upon the completion of the subdivision and rezoning of the parcel by the seller;
- b. Zoning and Land Use: Roxul, or designated third party, shall obtain and secure all lot changes, zoning changes, deed restrictions, permits, including PSD air permits, and/or any other land use approvals necessary to use and operate the Facility at the West Virginia Site in accordance with its intended plans;
- c. Voluntary Remediation Program: The West Virginia Site shall be eligible to participate in the West Virginia Voluntary Remediation Program (the "Remediation Program") and obtain or receive a Certificate of Completion under the Remediation Program from the WVDEP that provides Roxul acceptable immunity from liability as determined by Roxul in its sole discretion;

- d. Board Approval. Roxul shall obtain and secure necessary approval from its Board of Directors to make the Final Investment Decision to construct and operate the Facility at the West Virginia Site within 180 days of fully executing this MOU;
- e. Third Party Commitments. Roxul shall negotiate independent agreements and/or memorandums of understanding with the city of Ranson and the County of Jefferson acceptable to Roxul prior to the Site Closing.

15. Binding Commitment. The obligations and covenants set forth in this MOU are intended to be binding subject to the occurrence of the conditions that Roxul (i) expends approximately \$150,000,000.00 (USD) to acquire, construct, equip, and operate the Facility at the West Virginia Site, and (ii) Employs approximately 140, and in no event less than 120, full-time equivalent employees at the Facility and administers a payroll of at least \$6,700,000, inclusive of benefits, per year for a minimum of three (3) years (which may or may not be consecutive years), with the first year of meeting such threshold being within five (5) years of the start of production at the Facility as that term is defined in the Facility's PSD air permit.

16. Irrevocable. This MOU, until accepted and executed by Roxul, shall constitute an offer by the WVDO, which shall remain open for a period of ninety (90) days from the effective date hereof. Upon acceptance and execution by the Roxul, this MOU shall become a legally enforceable contract.

17. Access to Data. Upon request, Roxul will provide the WVDO with access to certain data necessary to reasonably verify the level of investment and economic impact of the Facility. Such data shall include without limitation, as applicable, relevant West Virginia business tax information; total capital investment in real property, personal property, materials, equipment, and/or machinery; total capital lease costs or costs to lease a new building; total construction costs; levels of direct employment of new or saved employees or non-qualifying employees; average salaries or wages; base salaries or wages; total construction employment of full-time equivalent employees and related salary or wage data; and any indirect employment data related to or associated with the Facility.

18. Notice. All notices which are permitted or required in this MOU shall be in writing and deemed valid and received if delivered personally; by registered or certified mail, return receipt requested; or by special carrier (such as Federal Express or UPS), with signature required, to the WVDO or Roxul as follows, unless otherwise agreed by the Parties in a signed writing:

Memorandum of Understanding
Roxul USA, Inc.
September 7, 2017

To WVDO:

West Virginia Development Office
Attn: Director of Business and Industrial Development
1900 Kanawha Blvd. East
Capitol Complex, Building 3, Suite 600
Charleston, WV 25305

To Roxul:

Roxul USA, Inc.
Attn: Ken Cammarato
Vice President, General Counsel
Roxul USA Inc.
4594 Cayce Rd.
Byhalia, MS 38611

19. Further Assurances. Each of the Parties hereto shall, from time to time at the request of the other party, without any additional consideration, furnish the other Party such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other actions and do such other things, as may be reasonably necessary in the opinion of counsel to the requesting party to carry out the provisions of this MOU.

20. Confidentiality. The Parties will maintain all documentations and communications provided to the other Party related to this project to construct the Facility and/or verifying the economic impact of the Facility at the West Virginia Site, as confidential, subject to the laws of the state of West Virginia, as applicable. The Parties will mark, or otherwise indicate in writing to the other Party, any documents or communications deemed confidential or proprietary.

21. Authority. The WVDO represents and warrants that the WVDO is the proper agency or instrumentality of the State of West Virginia to commit the economic development assistance set forth herein, and that the Director of WVDO is vested with the full legal authority and is duly authorized to execute this MOU on behalf of the WVDO and the State of West Virginia.

22. Amendments or Modifications. This MOU may only be amended or modified by a signed writing executed by authorized representatives of the Parties.

23. Severability. If any provision of this MOU shall for any reason be held illegal, invalid or unenforceable, then the other provisions of this MOU shall not be rendered invalid or

otherwise affected thereby, and shall continue in full force and effect to the maximum extent permitted by applicable law.

24. Subcontracting. Neither Party may assign or subcontract any of its obligations or duties under this MOU, without the prior written consent of the other Party, which consent shall be in the sole determination of the Party with the right to consent.

25. Assignment. No party shall have the right to assign this Agreement or any portion hereof, or any of its respective rights or obligations hereunder, without the prior written consent of the other party; provided however, that Roxul shall be permitted to assign this Agreement or any portion hereof, or any of its rights or obligations hereunder, to any affiliate of Roxul without the prior consent of the WVDO, however, Roxul will still remain ultimately responsible and liable for the performance of any such assignee's obligations hereunder.

26. Force Majeure. Neither Party shall be responsible for any delay or failure in performance of any part of this MOU if such delay or failure is caused by fire, flood, explosion, war, act of terror, embargo, national economic crisis, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Party in writing within ten (10) days after the beginning of any such Force Majeure event. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Party receives notice under this paragraph, the non-affected party may, without any liability to the other Party, terminate this MOU; provided, however, that Roxul will repay the Forgivable Loan described in paragraph 5, or such portion thereof that fairly and equitably reflects the difference between the draw on the Forgivable Loan and Roxul's actual investment in the Facility, if Roxul terminates the MOU pursuant to a Force Majeure event covered by this provision. Further, if Roxul provides notice of a Force Majeure event which results in a delay of the performance of its obligations set forth in paragraph 5, Roxul's performance obligations shall be extended by the period of the Force Majeure delay up to an extension of one (1) year.

27. Available Workforce. The State acknowledges that the workforce available to Roxul in the State, County, and surrounding vicinity is a critical reason for Roxul's decision to locate at the West Virginia Site. Should Roxul be able to demonstrate that its ability to recruit a competitive workforce has been adversely impacted by the WVDO providing more advantageous terms, conditions, or economic incentives than those provided to the Company within five (5) years from the execution of this MOU, then the WVDO agrees to work in good faith with Roxul to determine if same, or similar, terms, conditions, or economic incentives may also be available to Company; provided, however, that this clause is not intended to interfere with the WVDO's ability to enhance economic opportunities on behalf of the state of West Virginia; provided, further, that

the WVDO shall have the ability, in its sole discretion, to determine whether the disclosure of such terms, conditions, or economic incentives is possible and/or appropriate or permitted under West Virginia law or the terms of an applicable non-disclosure agreement, if any; and provided, further, that the WVDO shall be under no obligation to advise Roxul of any development prospects and/or projects that may be engaged with the WVDO to investigate investment opportunities in West Virginia.

28. Ombudsmen. The dedicated point-of-contact for the Parties to ensure that the obligations set forth in this MOU are implemented, documented, and achieved are as follows:

- a. WVDO: Todd Hooker, Deputy Director
Todd.E.Hooker@wv.gov
(304) 558-2234
- b. Roxul: Ken Cammarato, Vice President, General Counsel
ken.cammarato@roxul.com
(662) 851-4734

If Todd Hooker is unable to serve in this position, Roxul will have the right to participate in a mutually agreed upon selection of who replaces Todd Hooker as Ombudsman to Roxul.

29. Press Releases. Neither party shall issue any press releases or make public announcements relating to this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that nothing in this Section shall impair either party's compliance with law or regulation generally or with any requirements of the Securities and Exchange Commission or of any national securities exchange or other stock market on which such party's securities are traded.

30. Future Expansion. If at any time Roxul anticipates a substantial expansion of its operations in the State of West Virginia beyond the scope currently planned for the Facility, and has met or exceeded the Project Thresholds described above, the State will review such expansion plans with the intent to provide additional economic development incentives to Roxul but shall not have an obligation to provide any incentives to Roxul with respect to such expansion.

31. Governing Law. This MOU shall be governed by the laws of the State of West Virginia.

Memorandum of Understanding
Roxul USA, Inc.
September 7, 2017

The Parties sign:

Roxul USA, Inc.

BY: 

NAME: Trent Ogilvie

ITS: President

Date: 9/7/17

West Virginia Development Office

BY: 

NAME: Kristopher Hopkins

ITS: Executive Director

Date: 9/7/17